

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA**

**HAROLD KELLY MURPHY,**

**Plaintiff,**

**v.**

**SOUTHERN ENERGY HOMES, INC.**

**Defendant.**

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**Case No. 06-CV-618-MEF**

**MOTION FOR LEAVE TO AMEND**

COMES NOW, Plaintiff, by and through counsel of record, and moves this Honorable Court to enter an order allowing Plaintiff leave to amend his Opposition to Defendant's Motion for Judgment on the Pleadings and in support thereof states as follows:

1. Pursuant to this Court's Order dated May 11, 2007 (Doc. #34), Plaintiff was given until May 24, 2007 to file a response to Defendant's Motion for Judgment on the Pleadings (Doc. #32).

2. On August 1, 2007, the United State District Court for the Western District of Louisiana in the case captioned *Guidroz v. Champion Enterprises, Inc.*, Civil No. 05-1148 entered an order denying Defendants' Motion to Dismiss because the plaintiff's claims were not barred by federal preemption.

3. Defendant herein has filed a Motion for Judgment on the Pleadings relying on the prior ruling in *Guidroz* and a letter dated January 19, 2007 from an individual at HUD that Plaintiff's claims were barred by federal preemption. That motion has been briefed and is pending before this Court.

4. The arguments advanced by defendants in *Guidroz* on preemption were nearly identical to those advanced by the Defendant in this case, and the Defendant gleefully argued this point itself to this Court that *Guidroz* was persuasive authority that should be followed. (Defendant's Brief in Support of Motion for Judgment on the Pleadings, p. 2 (Doc. #33) and Defendant's Reply Brief, p. 3 (Doc. #39))

5. On August 1, 2007, the court in *Guidroz* denied Defendants' Rule 12(b)(6) Motion to Dismiss Amended Complaint based on federal preemption. See attached Exhibit A (Order of United States Magistrate Judge C. Michael Hill dated August 1, 2007).

6. The court considered the HUD letter which was filed as an exhibit and relied upon by the defendants but agreed with plaintiffs that the Complaint, as amended, was not preempted and thus necessarily that the HUD letter does not stand for what defendants were trying to argue it did.

7. As the Defendant argued here, Plaintiff's claims herein are substantially similar and are likewise not barred by preemption because a HUD Code manufactured home is not performing in compliance with the HUD Code if water is condensing in the walls.

8. Additionally, another court has denied the identical defense argument based on federal preemption. On June 25, 2007, Judge William Shashy of the Circuit Court for Montgomery County, Alabama denied identical arguments in Defendants' Motion to Dismiss in the case of *Shannon Killough v. Fleetwood Enterprises, Inc., et al.* Case No. 03-cv-2006-001539. See attached Exhibit B.

9. Thus, the only two courts' to rule on this issue to date have denied Defendant's preemption based arguments (not counting every single reported opinion to date relating to the HUD Code and manufacturing housing which has denied any preemption based arguments).

WHEREFORE, premises considered, Plaintiff prays this Honorable Court will grant its motion for leave to amend its Response to Defendant's Motion for Judgment on the Pleadings and further deny Defendant's Motion for Judgment on the Pleadings based upon federal preemption and grant such other relief as is just.

/s/ C. Lance Gould

C. Lance Gould (ASB-0913-G66C)  
Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically filed the original of the foregoing document in this Court and served a copy upon all Defendants of record as listed below by placing a copy of same in the United States Mail, first class, postage prepaid on this the 7th day of August, 2007.

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